BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **CHARLES A. CALKINS, M.D.** Holder of License No. **9848** For the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-05-0171A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (Letter of Reprimand)

The Arizona Medical Board ("Board") considered this matter at its public meeting on December 7, 2005. Charles A. Calkins, M.D., ("Respondent") appeared before the Board for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue the following Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 9848 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-05-0171A after receiving a complaint from a fifty-nine year-old female patient ("JMS") alleging among other things,[1] that Respondent performed unnecessary carpal tunnel release on her right wrist. JMS presented to Respondent on November 18, 2004 complaining of a painful right wrist mass. Respondent diagnosed a dorsal ganglion cyst and arranged to perform a surgical excision. A podiatrist was scheduled to perform an excision of a neuroma of JMS's left second intermetatarsal space of the left foot during the same surgery. On the date of surgery, while the podiatrist was excising the neuroma,

[1] The remaining allegations were determined to be unfounded.

Respondent performed a carpal tunnel release. As he was completing the release, the circulating nurse informed him he was supposed to excise a ganglion cyst. Respondent then turned JMS's hand over and excised the cyst.

4. Respondent testified he normally sees the patient in the pre-op room and does an exam of JMS and signs the operative permit. Respondent testified he did not do so with JMS because the podiatric surgeon wanted to get started on JMS's foot. According to Respondent, while he was working on his first case he asked if the carpal tunnel release was his next case and he was told it was third. Respondent testified this led him to presuppose he was doing a carpal tunnel on JMS, his third case. Respondent testified when he came out of his second case he intercepted JMS as she was being rolled into the room, looked at her hand, wrote his orders and came back in when JMS was asleep. Respondent noted the foot work was being done, the hand was prepped and he began the carpal tunnel release. Respondent testified when he was done the circulating nurse came over and told him he was supposed to have removed a cyst. Respondent testified he then removed the cyst, instructed JMS be kept in the facility until she fully recovered and informed JMS what had happened and apologized. Respondent testified JMS had no untoward effects other than the scar and any pain.

5. Respondent was asked what his first two cases of the day were. Respondent recalled the second case was a laminectomy, but stated he would have to look back at the surgery schedule to recall what the first case was. Respondent was asked if there was carpal tunnel release on his schedule that day. Respondent testified there was not and it was a presupposition in his mind that was never corrected along the way, and most of that was his fault. Respondent was asked if it was his custom the day before or the morning of surgery to review in his mind the cases he is going to do and how he is going to go about preparing for them. Respondent testified usually when he leaves the second case he goes to the pre-op room and sees the next patient, signs the permit, makes sure it is correct, and looks at the patient before

the patient goes to the operating room. Respondent noted that did not happen with JMS because the podiatrist had already started on the foot and JMS was not in the pre-op room.

6. The Board noted its question was more about Respondent's preparation for the day of surgery – does he get a list from his staff or does he review the records the day before the surgery, and review any articles or papers he might need to prepare for the surgery. Respondent testified he usually has a bag with the charts and/or the x-rays and sometimes he reviews them the day before, but usually the day of the procedure. Respondent was asked if when he reviewed the charts the day of JMS's surgery any of them noted a carpal tunnel release. Respondent testified they did not. Respondent was asked if he did a history and physical of JMS on the day of surgery. Respondent testified he did a history and physical several days before and it is usually a single page fill-out for outpatient surgery. The Board asked why then he signed the history and physical form on the same day as the surgery. Respondent testified he signed it on the morning of the day of surgery, but not when he was seeing JMS. Respondent was asked if it was his custom to fill out the history and physical examination before surgery, but sign it on the day of surgery. Respondent testified the rules say it has to be done within seven days or a new, or updated one has to be done if it is thirty days or older. Respondent testified the form is filled out in the office and the informed consent goes on in the office when he is talking to the patient about what he is going to do.

7. Respondent was asked why he thought there was a seven day rule – whether it had anything to do with the fact that the physician would examine the area that is going to be operated on and make certain what happened to JMS did not happen. Respondent testified it was his normal routine to examine the patient, and in JMS's case he had seen her on the bed on the way to the operating room as he came out and her right hand had "yes" written on it. Respondent noted somewhere in his mind he thought he was doing a carpal tunnel and that was never corrected by him or by staff. Respondent admitted the consent form said "excision of

ganglion cyst" and he wrongly performed a carpal tunnel release.

8. Respondent was asked if there was a policy in existence at the facility where he performed JMS's surgery that requires a pause in the operating room by all those involved to ensure that everyone is in agreement before the procedure begins. Respondent testified there was such a policy. Respondent was asked if it was followed in JMS's case. Respondent testified it was not while he was in the room and it may have been done when the podiatrist began his procedure. Respondent noted when he walked into the operating room JMS was already prepped, the hand was lying out, and he started the carpal tunnel. Respondent noted the technician and the anesthesiologist said nothing. Respondent testified it happened very fast and he is embarrassed by it.

9. Respondent was asked why and how, if he did not have another surgery with carpal tunnel scheduled that day – just a ganglion excision on the dorsal side of a wrist – he ended up doing a carpal tunnel release on the volar side. Respondent testified he thought he had a carpal tunnel on it because during the first case he asked the circulating nurse if the carpal tunnel was next and he remembers very clearly her saying "no, that's the third case. That's after the laminectomy." Respondent testified this is one of the mistakes made – no one said anything so he assumed he was doing a carpal tunnel release. Respondent testified he does not do a lot of hand surgery as a general orthopedist. Respondent noted he does some fractures and has done carpal tunnel release for twenty-eight years. Respondent was asked whether he was the only orthopedic surgeon in his practice. Respondent testified there was another orthopedic surgeon. Respondent noted his practice was very busy and he did back surgery, hand surgery, joint replacement and trauma.

10. Respondent was asked how many patients he sees on average in his office. Respondent testified he sees thirty to forty per day with the help of a physician assistant. Respondent testified he schedules Tuesdays for inpatient and complicated surgeries and Fridays

for outpatient surgeries. Respondent was asked what he has done to avoid this type of complication in the future. Respondent testified he has gotten back in his routine of seeing the patient preoperatively and strictly adheres to the "time out" rule. Respondent testified he was thankful that it was a minor incision on the correct arm and it was not a huge incision that maimed the patient. Respondent was asked if he spoke to JMS's family after the procedure. Respondent testified he spoke with JMS in the second stage of recovery, but did not recall speaking to the family. Respondent was asked if he thought it wise in this circumstance to finish the unwarranted surgery, go to the family and explain what happened and see if he should go ahead with the scheduled procedure or just abort the procedure. Respondent testified he did not consider doing this in the circumstance because the two surgeries were so close and it was a fairly minor surgery. Respondent noted if he had done a knee replacement on the wrong knee he could see where he would want to talk to the family before he did anything else, but not in this case.

11. Respondent was asked about when he saw JMS in the hallway on the way to the surgery and why he did not talk to her about the procedure then. Respondent testified he looked at her hand and saw the "yes" written on it. Respondent was asked what was the use in seeing a patient prior to surgery if he did not talk to her about the procedure he was going to do. Respondent testified it was not his favorite way of practicing and he is upset by it. Respondent noted he did not have much time to talk to JMS. Respondent testified he did not mean to deflect responsibility because he strongly feels it is his fault and that is what he told JMS. Respondent was asked if when he did the carpal tunnel release there was any anatomy that indicated a problem. Respondent testified he would not say it was a badly compressed nerve, but there was a fair amount of tissue in the carpal. Respondent noted he does the carpal tunnel in the palm and it is quite often that you do not see a lot of pathology; it is mostly diagnostic, either by nerve study or by symptoms that preexist. Respondent noted he now does a strict time-out, sees the patient pre-operatively, signs the operative permit, checks the operative site and goes through his notes.

12. In mitigation, the Board noted Respondent was forthright in both the records he supplied to the Board and his testimony before the Board.

13. The standard of care required Respondent to verify the surgical site and procedure are properly identified prior to commencing a procedure.

14. Respondent deviated from the standard of care because he did not verify the surgical site and procedure prior to commencing a carpal tunnel release.

15. JMS was harmed because she underwent an unnecessary carpal tunnel release. JMS was subject to the potential harm of any and all complications associated with the unnecessary carpal tunnel release, including damage to the median nerve and median nerve branches.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public").

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Respondent is issued a Letter of Reprimand for performing an unscheduled carpal tunnel procedure on a patient prior to performing the correct procedure.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-102. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED this 9th day of February, 2006.

THE ARIZONA MEDICAL BOARD

By _____
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed this 10th day of February, 2006 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Executed copy of the foregoing mailed by U.S. ~~Certified~~ Mail this 10th day of February, 2006, to:

Charles A. Calkins, M.D.
Address of Record

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